

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PEARL MORGAN,)
) Case No.
Plaintiff,)
) COMPLAINT
vs.) Personal Injury -- Non-Auto
) CLAIM NOT SUBJECT TO
KIMCO REALTY CORPORATION,) MANDATORY ARBITRATION
a Maryland corporation,)
) Fee at ORS 21.160(1)(c)
Defendant.) Prayer Amount \$403,328.54

COMES NOW Plaintiff and, for claim for relief against Defendant in negligence
causing personal injury to Plaintiff, complains and alleges as follows:

1.

That during all of the times herein mentioned, Kimco Realty Corporation was a
corporation organized and existing under and by virtue of the laws of the State of Maryland
and was authorized to do business within the State of Oregon.

2.

That during all of the times herein mentioned, Defendant owned and operated a mini-
mall, including retail stores which it leased to lessors at 400 NW Eastman Parkway in
Gresham, Multnomah County, Oregon. That Defendant retained to itself the common areas

1 of property, including the parking area surrounding the leased buildings and was responsible
2 for the care and maintenance of the parking lot.

3
4 3.

5 That on or about April 26, 2019, Plaintiff arrived at Defendant's parking lot via her
6 automobile and parked in a designated handicapped parking space, exited her vehicle and fell
7 over a concrete curb stop that Defendant had erected near the head of the parking space
8 occupied by Plaintiff's vehicle and Plaintiff fell and was injured in the manner hereinafter
9 more fully described.
10

11 4.

12 That at said time and place, Defendant was negligent and failed to comply with the
13 Americans with Disabilities Act in its construction and maintenance of the aforesaid parking
14 lot in one or more of the following particulars, to-wit:

15 (a) In installing the aforesaid wheel-stop within a disabled parking stall, all
16 in violation of the Americans with Disabilities Act (negligence per se);
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18 (b) In failing to provide an accessible route for handicapped individuals,
19 including Plaintiff, from the parking stall to the aforesaid retail buildings, all in violation of
20 the Americans with Disabilities Act (negligence per se);
21

22 (c) In failing to warn its disabled patrons of the tripping hazard created by
23 its unauthorized wheel-stop;

24 (d) In failing to maintain the aforesaid parking lot in a reasonably safe
25 condition for a disabled invitee; and
26

1 (e) In failing to protect disabled invitees using its disabled parking slot
 2 from defective conditions on the premises, including the aforesaid wheel-stop.

3 5.

4 That as the result of the negligence of Defendant as aforesaid, Plaintiff fell and
 5 sustained injuries, including a fracture of the base of the second metatarsal of the left foot,
 6 fractures of the distal and basal aspects of the third metatarsal of the left foot, and a fracture of
 7 the distal fourth metatarsal of the left foot, together with a torn labrum of the right hip, bruises
 8 and contusions, and all of the aforesaid injuries have caused Plaintiff to sustain pain and
 9 suffering and the injuries have healed with permanent residuals and Plaintiff will sustain pain
 10 and suffering in the future all to her noneconomic damage in a sum to be determined by the
 11 jury not to exceed \$300,000.
 12

13 6.

14 That as the result of the negligence of Defendant as aforesaid, Plaintiff was required to
 15 incur reasonable and necessary accident-related medical expenses all to her economic damage
 16 in the sum of \$103,328.54.
 17

18 WHEREFORE, Plaintiff prays for Judgment against Defendant for a sum of
 19 noneconomic damages in an amount to be determined by the jury not to exceed \$300,000,
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1 together with her economic damages for accident-related medical expenses in the sum of
2 \$103,328.54, together with her costs and disbursements incurred herein.

3 DATED this 3RD day of DECEMBER, 2020.

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5 MERKEL & ASSOCIATES

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7 By: 
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10 Of Attorneys for Plaintiff
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